

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1051 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 and 2 Yes, 3 to 5 No.

GUJARAT ELECTRICITY BOARD

Versus

SUB-DIVISIONAL MAGISTRATE

Appearance:

MR MD PANDYA for the Petitioner.

MR.K.P.RAVAL, Addl.Public Prosecutor for the respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 18/10/96

ORAL JUDGEMENT

The petitioner, by way of this petition under article 226 of the Constitution of India, has challenged the show cause notice dated 13-9-1988, Annexure "A" to the petition, issued by the Sub-Divisional Magistrate, Bulsar, respondent No.1 herein, under section 144 of the Code of Criminal Procedure, calling upon the petitioner to direct the concerned officer of the Board to remain

present before him and to show cause as to why orders proposed in the said notice should not be passed. In the said show cause notice, it was , inter alia, alleged that in the area of Valsad Nagar Palika supply of electricity was cut off by the Board without prior notice. On 7-9-88 at about 5.00 p.m. the power supply was cut off for a continuous period of about 6 hours and there was no supply of electricity in the area in question. It is further stated in the notice that on account of technical reasons when the supply was disturbed, no action was taken to find out the mechanical failure within a reasonable time and even on account of technical fault when supply of electricity is disturbed, the officers of the Board do not give proper reply. It is further stated in the notice that doctors have made grievance that whenever operation is being performed, all of a sudden there is failure of electric supply and that causes danger to the life of the patient.

The petitioner gave its reply dated 26-9-88. According to the petitioner, there are number of reasons for the failure of power supply. According to the petitioner, the Board is required to declare a staggering day as per the instructions of the Government. It is further stated that whenever repairs etc are to be carried out, advance intimations are , in fact, given by different modes of intimation. However, in cases of accidental failure of power supply, it is not possible to give such intimation. Such accidental failure is on account of failure of transformer or some defect in the transformer, or on account of cyclone or sky lightening in monsoon season, or puncture in insulator or some defect in the jumper, or fall of wire on account of falling of a tree or accident with electric pole or birds or by kite flying by the people or use of more electricity than provided resulting in over-load, or puncture in cable because of water in monsoon season. In view of these reasons, according to the petitioner, if there is cut in the electricity supply all of a sudden, it is not possible for the Board to issue notice in advance to the public at large. With regard to the power cut in question i.e. on 7-9-88 at 5.30 p.m. as mentioned in the show cause notice, it was pointed out by the petitioner in its reply that supply through Atakpardi Sub-Station was disturbed all of a sudden and the Junion Engineer on duty followed up the matter. The supply line which runs through the fields or farms required to be checked up by examing each pole on which wires were hanging. The petitioner has stated that on that day because of heavy rain and even inspite of the fact that the members of the staff moved in the fields but could

not trace the fault. Even the ground cables, oil circuit-breaker and other equipments were also checked and tested. On that day even the telephone line all of a sudden went out of order and, therefore, it was not possible to communicate the message to the Control Room and hence the staff members were required to go there personally. In substance, it was pointed out that on account of heavy rain and because of the darkness it was not possible to find out the fault and it was decided that supply should be made available to the area in question through Atul Sub-Station on Parnera line. In the circumstances, the concerned officer with the staff went to the said Sub-Station and after getting clearance of the line and taking necessary precautions such as earthing etc., made an arrangement to tape the line near Vanki river. This exercise, according to the petitioner, took about five hours. It is, therefore, the case of the petitioner that inspite of the best efforts made by its staff, it was not possible to restore the power supply within a short period and in any case diverting the supply, power supply was restored.

In view of the aforesaid reply of the petitioner, it was expected from respondent No.1 to withdraw the notice. However, he called upon the petitioner Board to produce certain documents viz:

- (i) copy of distribution map covering the entire city distribution area,
- (ii) copy of proposal for establishing 66 KV Sub-station in Bulsar city,
- (iii) comparative statement of the staff and sources, vehicles, telephone etc between taking over from the licensee and the present position,
- (iv) proposal for requirement of technical staff looking to the present position of number of consumers, city distribution and increase in revenue of Valsad City Division,
- (v) technical information about new 11 KV Feeder, looking to the loading of the lines to existing city feeders,
- (vi) proposal submitted for increase in number of panels and requirements of other materials, crossing of railway lines by overhead tower lines in place of underground cables.

In view of this, the petitioner has approached this Court for appropriate writ, direction and order quashing and setting aside the notice dated 13-9-88 at Annexure "A" to the petition issued by respondent No.1.

Normally this Court refrains itself from

exercising powers under Article 226 of the Constitution when the proceedings are at the show cause notice stage. Under the circumstances, the notice can be disposed of on the ground that the same is premature as the final order is not passed. But this principle of law cannot be , as a straight jacket formula, made applicable to all the cases. While exercising powers under Section 144 of the Code, the concerned authority is required to appreciate the fact that the petitioner being a statutory Board is expected to perform its duties and discharge obligations of supplying electricity to the public at large in an efficient manner and is hardly interested in disconnecting the same for any ulterior motive or on flimsy ground. There are number of other reasons over and above those which are stated hereinabove beyond the control of the Board and for the alleged breach of the same, if the provisions of section 144 of the Code , which are mainly for the purpose of preventing nuisance or apprehended danger are sought to be invoked, it would be a case of arbitrariness and any order that may be passed would be capricious and illegal. Reading the allegations made in the notice, in my opinion, none of the allegations satisfies the requirement of section 144 of the Code. Thus, the initiation of the proceedings under section 144 of the Code by the Sub-Divisional Magistrate ,in the instant case, itself, is illegal, arbitrary and without authority of law. Under the circumstances, respondent No.1 is not entitled to proceed further against the petitioner Board.

In the result, this petition is allowed. Notice dated 13-9-88 at Annexure "A" to the petition issued by respondent No.1 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

True copy